IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3382 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD

Versus

R C PATEL

Appearance:

1. Special Civil Application No. 3382 of 1990

MR MD PANDYA for Petitioner No. 1

MR DS VASAVADA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 24/08/2004

ORAL JUDGEMENT

Heard learned advocate Mr.M.D.Pandya on behalf of the petitioner and learned advocate Mr.D.S.Vasavada for respondent.

#. In the present petition, the petitioner Board has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference [IT] No.189 of 1987 dated 15th January, 1990. The Tribunal has allowed the reference and declared that the concerned respondent Mr.R.C.Patel to Sabarmati Division is deemed to have been promoted as Senior Clerk [Accounts] with retrospective effect from 22nd February, 1974 and he be given all the consequential benefits arising therefrom. The difference in wages arising out as a result of this order shall be paid to the concerned workman within three months from the date of publication of this award. The tribunal has also awarded Rs.350/- towards cost. This Court has admitted the matter while issuing Rule and granted interim stay in term of para-9[B] vide order dated 26th October, 1993.

#. The dispute raised by the respondent workman through Union is as under;

"Whether Shri R. C. Patel of Sabarmati Division be given promotion as Senior Clerk [Accounts] with effect from 22nd February, 1974 and he be given all the consequential benefits arising therefrom."

#. Learned advocate Mr.M.D.Pandya has submitted that first promotion order issued in favour of the respondent workman on 22nd February, 1974 [Annexure-B, page-43, at Item No.4] on temporary basis and posted at Bavala Division Office. This order was pertaining to 30 employees. The condition incorporated at Sr.No.2 is as under :

"The above employees should join their duties latest by 11th March, 1974, failing which, this order shall be considered as cancelled."

#. Learned advocate Mr.M.D.Pandya has submitted that in pursuance of the order dated 22nd February, 1974, the respondent workman not reported at Bavla. Thereafter, another order of promotion on temporary basis to the post of Senior Clerk was issued on 22nd July, 1974 [copy thereof is produced at Annexure-C at page.45] posting him at Dahegam, wherein also, similar condition was incorporated in the said order. Thereafter, on 22nd April, 1975 again issued promotion order on temporary basis in favour of the respondent employee posting him at Dabhoda having same condition to report for duties latest by 12th May, 1975. Even though the workman concerned had not joined the duties. Thereafter, vide office order

dated 21st August, 1974 [which is at page.48 Annexure-E] the petitioner Board has partially cancelled the order of promotion dated 22nd July, 1974 in favour of three employees including the respondent employee as they have shown their unwillingness to accept promotion. Page-49 is the letter written by the respondent employee dated 7th June, 1975 whereby he had shown his unwillingness to accept promotion order posting him at Dabhoda in the post of Senior Clerk due to family circumstances. The said order has been cancelled vide order dated 11th June, 1975. It is case of the petitioner that all these documents produced by the petitioner before this Court, were also produced before the Tribunal. Learned advocate Mr.Pandya has read over the relevant portion of the award before this Court. Mr.Pandya submitted that a specific condition was incorporated in the order of promotion which required the concerned employee to report on duty at transferred place and new posting within stipulated time limit and in the event if the concerned employee did not report at promotional post as per the order, said order of promotion would stand cancelled automatically in respect of the employee. Therefore, Mr.Pandya has submitted that for the sake of arguments, if the workman was not relieved by the concerned Officer, in that case, he ought to have made complaint immediately against the concerned officer or would have made request in writing for his relieving from the existing posting to enable him to join at new posting. But as such, no letter seems to have been written by the workman to the concerned authority. The Tribunal has relied upon and considered oral evidence adduced by the workman for not relieving him from the post. Therefore, according to the learned advocate Mr.Pandya, the labour court has committed gross error in considering oral evidence of the workman and not considering the consistent conduct of the workman. Mr.Pandya has also contended that the first order of promotion in question is dated 22nd February, 1974 and thereafter, second order of promotion was passed on 22nd July, 1974 and third order was dated 22nd April, 1975. Vide order dated 21st August, 1974, the order of promotion dated 22nd July, 1974 was ordered to be cancelled. Upto this stage, no complaint is filed by the employee concerned to the Board and as such, no dispute has been raised by the concerned employee before the competent authority and he remained silent upto 21st August, 1974. Therefore, learned advocate Mr.Pandya has submitted that tribunal has committed gross error in relying Circular dated 26th December, 1968 being Establishment Circular No.152 and Item No.58 of Minutes of the meeting between the Superintendent Engineer, Sabarmati Division and Union concerned. Mr.Pandya has

further submitted that ultimately respondent employee accepted promotion in the post of Senior Clerk pursuant to the order dated 19th May, 1976. It is stated before this Court that the respondent has retired from service on 30th June, 2002 from the post of Superintendent of Accounts. Therefore, submission of learned advocate Mr.Pandya is that once the employee concerned promoted by the Board with a specific condition that he should report within stipulated time and if not reported, then the order of promotion would stand cancelled automatically. If the employee concerned was not relieved by the authority concerned, he should have immediately approached the higher authority. In the instant case, there was no approach to the higher authority by the employee concerned except oral request as deposed by the respondent before the Tribunal. Therefore, he submitted that the Tribunal has committed gross error in relying on oral request and evidence thereof by the concerned workman. He also submitted that promotion order dated 22nd February, 1974, then order dated 22nd July, 74, 22nd April, 75 and 21st August, 1974, no grievance was raised by the concerned employee till next promotion order has been issued by the Board. Therefore, learned advocate Mr.Pandya has submitted that tribunal has committed gross error in granting benefit of promotion with retrospective effect in exercise of the powers under the Industrial Disputes Act, 1947, when the respondent remained silent and without any effective steps for raising any dispute. He also raised contention that Tribunal cannot go beyond the date of reference to grant service benefits with retrospective effect. He also submitted that Reference is dated 7th July, 1987 and the Tribunal has granted benefit with effect from 22nd February, 1974 and therefore also, the Tribunal has committed gross error.

#. Learned advocate Mr.D.S.Vasavada submitted that according to the Establishment Circular No.152, it is incumbent upon the concerned authority to relieve the concerned employee when promotion order has been issued in his favour, the respondent employee was not relieved as per this Circular and therefore, he was not able to resume duty at the promotional post and therefore, he was not at all in fault for not joining in the post of Senior Clerk. He also submitted that for delay aspect, discussion was going on with the Union and the Board, for which, ultimately, the Superintendent Engineer, Sabarmati had to pass some orders about refixation of seniority of the respondent employee in the post of Senior Clerk and this issue remained pending upto 1985 and there was no delay in raising dispute and therefore, the tribunal has rightly passed the award in favour of the respondent

employee. He also submitted that the other employees were given benefit with retrospective effect after examining the respective case and therefore, the workman is also entitled to same benefit which was rightly granted by the Tribunal in his favour and as such, no error has been committed by the Tribunal.

#. I have considered submissions of the learned advocates for the parties. It is apparently found from the record that Tribunal has committed gross error. It is very difficult to understand the reasons given by the Tribunal. The Tribunal has relied upon Establishment Circular No.152 but not considered the consistent conduct of the workman concerned. The first order of promotion dated 22nd February, 74 was not accepted by the workman and not joined on his duties upto 11th March, 1974 and therefore, it stood cancelled automatically. It is obvious that each order of promotion or any kind of order issued by the employer, then, whatever conditions incorporated in such order including appointment order, it governs the rights between the parties. Similarly, in promotion order also, specific condition incorporated by the petitioner Board that he should join within stipulated period, otherwise, the order for promotion qua such employee shall stand cancelled automatically. Another very important aspect is that by office order dated 21st August, 1974, the petitioner Board has cancelled subsequent promotion order dated 22nd July,74 relating to three employees who have shown their unwillingness to accept promotion. In such circumstances and considering the letter dated 7th June, 1975 written by the concerned employee not accepting promotion order and ultimately not joining the duties at transferred place at Dabhoda due to family circumstances, in such letter no grievance has been pointed out that earlier promotion orders were cancelled by the petitioner Board. Therefore, considering the fact that the Board has granted temporary promotion in favour of the respondent but not accepted the promotion order and not joined duties at promotional posting and resultantly, the orders in question were cancelled by the Board, in my opinion, reliance placed by the the tribunal on oral evidence and not to consider the consistent conduct of the respondent employee, was not just and proper. There is no dispute that the respondent had not accepted promotion orders dated 22nd February, 74, 22nd July, 74 and 22nd April, 75 and all three orders have been cancelled by the petitioner Board. As such, no written complaint has been filed by the employee for the period from 1975 to 1987 to the higher authority and the respondent has not raised dispute immediately under the provisions of the

Industrial Disputes Act, 1947. Therefore, in the case where the Board has cancelled the earlier orders of promotion on the ground that employee concerned had not reported at the new place of posting within stipulated time limit, according to my opinion, the respondent having no legal right and entitled to promotion with retrospective date.

#. Therefore, taking into consideration the entire facts and circumstances of the case and reasoning given by the Tribunal and the fact that the Tribunal has clearly ignored documentary evidence which were on record not disputed by the respondent employee as well as the consistent conduct of the employee not accepting the promotion orders which did not suit to the employee concerned, in my opinion, the tribunal has committed gross error in granting the benefit in favour of the respondent.

#. In view of my aforesaid discussion, petition deserves to be allowed and the same is allowed accordingly. The impugned award in the present petition passed by the Industrial Tribunal, Ahmedabad in Reference [IT] No.189 of 1987 dated 15th January, 1990 is hereby quashed and set aside.

Rule is made absolute with no order as to costs.

Date : 24.8.2004 [H.K.Rathod, J.]

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